the issue of limitation and it may well be had that issue been raised the respondents might have been successful upon it. That, however, is entirely beside the point for the proceedings were never allowed to reach the stage where limitation might have been raised.

I would allow the appeal and would make an order in accordance with section 553 of the Code that the Court below do proceed to determine the suit.

As regards costs, the appellant should have the costs of this appeal and his deposit should be paid out to him.

Mathew, C.J. : — I agree with the judgment of Thomson, J. which I have had the advantage of reading and have nothing to add.

Pretheroe, J. : — I have had the advantage of reading the judgment proposed by Thomson, J. I agree with the decision he has arrived at and also with his reasoning. I would make an order in similar terms.

Appeal allowed.

TAN AH CHOEW v. PUBLIC PROSECUTOR.

[Rev. Crim. Juris. (Abbott, J.) March 15, 1952]

[Malacca — Criminal Revision No. 1 of 1952]

Hire purchase agreeement — Illegal pawning — Pawn Brokers Ordinance, s. 30(1) — Jurisdiction of Magistrate — Criminal Procedure Code, s. 435(1).

A and B enter into a hire purchase agreement whereby A hires out a bicycle to B; until such time as all instalments are paid the bicycle is to remain the property of A but will be in B's possession. On the day the agreement is signed B, without the consent or authority of A, pawns the bicycle with C, a pawnbroker. B is charged before a magistrate with criminal breach of trust but is acquitted; the magistrate orders the bicycle be handed over to C.

Held, that section 435(1) of the Criminal Procedure Code is not limited to the particular offence with which an accused is charged and where there is evidence of some offence having been committed, in this case an illegal pawning contrary to section 30(1) of the Pawn Brokers Ordinance, the magistrate has jurisdiction to order that the bicycle be restored to its rightful owner.

CRIMINAL REVISION.

P. Hall for the petitioner.

C. S. Jayaswal for the pawn broker.

Cur. Adv. Vult.

Abbott, J.: — This case has come before this Court upon a petition for revision presented by one Tan Ah Cheow who is a bicycle dealer in Malacca. On the 4th of September 1951 the petitioner entered into a hire purchase agreement for the sale of a bicycle with one Tan Sam Boon. The hire purchase agreement provided that the bicycle should remain the property of Tan Ah Cheow until such time as the instalments were paid in full. It further provided that the hirer should retain the bicycle in his own possession. The hirer paid a deposit and on the very day that he signed the hire purchase agreement he pawned the bicycle. He was charged before the Magistrate at Malacca with criminal breach of trust, and for reasons which appear to me to be somewhat obscure, he was acquitted. Following upon the acquittal the Magistrate gave an order that the bicycle, which was an exhibit in the case, be handed over to the pawn broker. Tan Ah Cheow has petitioned for a reversal of that order and his learned counsel has informed this Court that the Magistrate's order has caused grave anxiety among cycle dealers in the Settlement. I am not surprised. Section 435 of the Criminal Procedure Code governs the making of orders for disposal of property regarding which an offence has been committed. By the implications of the Magistrate's decision the hirer did not commit the offence with which he was charged and therefore, at first sight, it would seem that the Magistrate was without jurisdiction to apply sub-section (1) of that section, but shorn of unnecessary words for the purposes of this decision that sub-section reads as follows :—

"At the conclusion of any trial in any criminal court the court may make such order as it thinks fit for the disposal of any property produced before it regarding which any offence appears to have been committed."

The sub-section is not limited to the particular offence with which the accused was charged. In this particular case it is clear from the evidence that an offence, other than that with which the accused was charged, was committed — namely, the offence of illegal pawning contrary to sub-section (1) of section 30 of the Pawn Brokers Ordinance, Cap. 216 in that the accused had knowingly pawned the property of Tan Ah Cheow without the latter's authority. The proper order for the Magistrate to have made was that the bicycle should be restored to its rightful owner, namely, Tan Ah Cheow and this Court so orders.

Order accordingly.